10/21/83

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:	)	
	)	
TARACORP, INC., a/k/a EVANS METAL COMPANY, SEITZINGERS, IMACO, and TARACORP INDUSTRIES,	)	CHAPTER 11
	)	JUDGE HUGH ROBINSON
Debtor.	)	CASE NO. 82-04654A
TARACORP, INC. a/k/a EVANS METAL COMPANY, SEITZINGERS, IMACO and TARACORP INDUSTRIES,	)	
Movant,	)	
v.	)	
PEOPLE OF THE STATE OF ILLINOIS ex rel. ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
Respondent.	)	

OBJECTION TO PROOF OF CLAIM,
AFFIRMATIVE ALLEGATIONS, AND
APPLICATION FOR INJUNCTIVE RELIEF

COMES NOW the Debtor, Taracorp, Inc. ("Taracorp"), and files this Objection to Proof of Claim, and moves this Honorable Court to disallow the Proof of Claim filed herein by the State of Illinois ex rel. Illinois Environmental Protection Agency ("Illinois"), and shows the Court as follows:

1. Illinois has filed Proof of Claim No. I-13 herein, ~~alleging that Taracorp is~~ liable to it for an amount

in excess of Five Hundred Thousand Dollars ($500,000.00). Any liability which Taracorp may have to Illinois is contingent and unliquidated.

2. Illinois has attached no documentation to the said Proof of Claim.

3. The said Proof of Claim is based upon alleged violations of the Illinois Environmental Protection Act and of Board Rules and Regulations by Taracorp at a facility which it owns and operates in Granite City, Illinois. The alleged violations involve air pollution control, land pollution control, and the treatment, storage, and disposal of hazardous wastes.

4. The said facility is now primarily a lead fabricating plant and also a secondary lead smelter which is not now in operation.

5. The said facility was owned and operated by NL Industries, Inc., f/k/a National Lead Industries, Inc. ("NL"), from as early as 1928 and possibly as early as 1903. Taracorp is of the belief that during NL's ownership, the facility was primarily a secondary lead smelter.

6. Taracorp acquired the said facility from NL on August 22, 1979, and has owned and operated the said facility since that time.

7. Any conditions that exist at said facility, including any conditions that allegedly may constitute the

alleged violations, existed before Taracorp acquired the said facility, and such conditions occurred during the ownership and operation of said facility by NL.

8. Taracorp is not liable to Illinois for the conditions alleged to exist at said facility.

9. If anyone is liable to Illinois for any conditions existing at the said facility, then NL is liable and not Taracorp.

10. Taracorp is not liable to Illinois for the amount stated by Illinois in the said Proof of Claim.

11. If the Court concludes that NL and Debtor are both liable to Illinois for violation of its environmental laws arising from the ownership and operation of the Granite City facility, the Court should determine and assess the liability between NL and Debtor.

AFFIRMATIVE ALLEGATIONS
AND
APPLICATION FOR INJUNCTIVE RELIEF

12. For more than a year Illinois has alleged a variety of violations of its environmental laws and rules as well as the United States environmental laws and regulations in an arbitrary and capricious manner which allegations have amounted to threats and intimidations that it will refuse to permit Debtor to operate its manufacturing facilities in Granite City, Illinois, unless Debtor agrees to the demands of Illinois with regard to removal of a waste pile at said facility.

13. The threats and intimidations are based upon unfounded assertions that the operations of the Granite City facility has caused harm to the citizens living and working in the area near the Granite City facility. Illinois published a report in April, 1983, wherein it stated that tests conducted by the State Health Department in 1982 and 1975 and 1976 all established that the citizens of the Granite City area had not suffered any harm from the operation of the Granite City facility.

14. Illinois has continuously asserted that there is an absolute requirement that the waste pile be removed to a hazardous dump site when in fact there are no Illinois laws or rules or United States laws or rules which require that the waste pile be removed to a hazardous waste dump. Illinois has publicly stated on a number of occasions that the cost of removal will exceed $20,000,000.

15. Illinois has continuously asserted that there are ground water contamination problems when in fact there have been no tests showing any ground water contamination and the tests conducted by Illinois at four wells on Debtor's property during 1982 and early 1983 reflected in Illinois' own view "inconclusive results." An additional eight wells were drilled on Debtor's property in July, 1983, and it is Debtor's understanding that recent tests at all twelve wells do not disclose any lead contamination in the ground water.

16. Illinois has continuously asserted that the waste pile must be removed because certain ambient air monitoring that occurred in the 4th calendar quarter of 1981 reflected substantial lead in air in excess of the U.S. EPA's national ambient air quality standard when in fact Illinois does not know whether the cause of such excess resulted from the operations by Debtor or by others in the vicinity who are also engaged in activities which permitted fugitives containing lead to escape into the air. Illinois has stated that the only cause was Debtor when in fact Illinois knew that St. Louis Lead Recycling Company, with whom Debtor had a contract, began actual recycling operations on the waste pile in the summer of 1981 and such activity created vast amounts of dust escaping into the air thereby considerably increasing any ambient air problems.

17. Although some fugitive dust may escape through the atmosphere from the waste pile, there are alternatives to removal of the waste pile to a hazardous waste site that are far less expensive and would better resolve any ambient air problems.

18. Debtor has not added any materials to the waste pile for approximately a year, however, Illinois has continuously "advised" Debtor that unless Debtor commits that the waste pile as it presently exists or following recycling (which would still result in a waste pile of 50%

to 80% of the existing waste pile) is removed, then Debtor will not be issued permits to conduct its smelting or fabricating facilities and in fact in February, 1983, Illinois denied the issuance of six permits to Taracorp relating to its smelting activities on the grounds that the operations of the particular facility would result in harm to the health of the citizens of Granite City unless Debtor made some commitment with respect to the disposition of the existing waste pile. Other permit applications have been withdrawn because Debtor does not believe it can obtain permits from Illinois with respect to the particular permitted facilities because of Illinois' position with regard to removal of the waste pile.

19. Permit applications are pending with Illinois and Illinois has intimated that those applications are not likely to be granted unless Debtor commites to undertake certain expensive activities primarily related to the waste pile.

20. Illinois has filed with the United States EPA a State Implementation Plan ("SIP") pursuant to the 1970 Clean Air Act Amendments. The Plan was filed September 30, 1983. A draft of the Plan was first received by Debtor on or about August 13, 1983, at which time Debtor and its advisors studied and analyzed the Plan applying to Debtor. The SIP only relates to ambient air lead, not with respect

to any other environmental violations asserted by Illinois. The SIP (and a Consent Decree proposed by Illinois) requires Debtor, in order to continue its operation, to expend well in excess of $1,000,000 to modify its process activities, most significant of which are related to claims for past environmental violations (creation of the waste pile and non-removal) by NL. Illinois has consented and did include in the SIP an alternative to lower the expenditure requirements by Debtor provided it considerably modifies what it may do in future operations.

21. The SIP states "emissions from the operation of the blast furnace and its associated activities were found to be the major contributor to the high lead values as measured on the filters." Illinois refused to issue new permits to Debtor with respect to the operation of the blast furnace and its attendant facilities in February, 1983, and Debtor has not operated such facilities since then. If the blast furnace and its attendant facilities were the "major contributor" to the emissions for which Illinois complains and such activity has ceased, then there should be no further requirements to modify the operations of Debtor's fabrication facilities in Granite City.

22. On September 28, 1983, Debtor received from Illinois a proposed Consent Decree, a copy of which is attached as Exhibit "A," and Illinois proposes that Debtor

enter into such Decree following the filing of a complaint by Illinois (presumably in a state court in Illinois). Debtor believes the complaint would be based upon a theory that the operations of the Granite City facility represents a threat to the health of the citizens of Granite City unless all of the provisions set forth in the consent Decree are in fact followed, notwithstanding the three health tests over a period of seven years by Illinois which established that the citizens in the area had not suffered any harm to their health.

23. Illinois asserts that once the proposed SIP completes all administrative processing the SIP has the effect of law. Illinois insists that each of the activities of Debtor must be operated only within permits granted by Illinois; however, Illinois is unwilling to let Debtor operate within its permits and compliance with SIP without further entering into a Consent Decree. The result of Illinois' position is that Debtor in order to operate any part of its facilities in Granite City must surrender in advance its due process rights with respect to future actions.

24. The proposed SIP is too rigid and the costs that would have to be incurred, particularly with regard to the waste pile, are too substantial a burden for Debtor to bear at this time; however, Debtor is willing to modify the operations of its fabricating facilities to come within

Strategy VII of the proposed SIP provided Illinois issues all new permits to Debtor for such operations for a reasonable period of time. Debtor will agree not to add any material to the waste pile.

25. Illinois has publicly announced it is beginning the process of determining whether to certify to the U.S. EPA the inclusion of the Granite City facility on the National Priorities List ("the Superfund List") created by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), which would enable the U.S. EPA (or Illinois) to assert treble damages for funds expended in removing the waste pile to a hazardous waste dump approximately 150 miles from Granite City.

26. Inasmuch as the certification to the U.S. EPA will only be for the purpose of enhancing Illinois' monetary claim, Illinois should be enjoined from any activity which leads to the listing of the Granite City facility on the Superfund List.

27. In the alternative, Illinois should only be permitted to certify the listing of the Granite City facility on the Superfund List if Illinois concedes that it has no claim against Debtor; that the U.S. EPA is the only party who may assert a claim, but the U.S. EPA is barred from asserting a claim because the U.S. EPA was notified that it was a contingent claimant but failed to file a claim by the bar date of July 6, 1983.

WHEREFORE, Taracorp prays that this Honorable Court inquire into its Objection To Proof Of Claim, Affirmative Allegations, And Application For Injunctive Reliefs and grant relief as follows:

1. That the Proof of Claim filed by Illinois, the same being Proof of Claim No. I-13, be disallowed in its entirety.

2. In the alternative, that the Court determine the amount of Taracorp's liability to Illinois and allow the said Proof of Claim in such amount only.

3. In the alternative, that the Court estimate, for the purpose of allowance, Taracorp's liability to Illinois and allow the said Proof of Claim in such amount only.

4. In the alternative, that the Court assess against NL any amounts that it determines Illinois is entitled to collect in connection with the Granite City facility and direct NL to make such contribution.

5. That Illinois be enjoined from any activity which would lead to the inclusion of the Granite City facility on the Superfund List.

6. In the alternative, Illinois may be permitted to certify the inclusion of the Granite City facility on the Superfund List provided it concedes it has no claim against Debtor and that the U.S. EPA is barred from asserting a claim.

7. That the Court grant such other and further relief as it deems equitable and just.

MACEY & SIKES

Morris W. Macey

Thomas R. Todd, Jr.

ARNALL, GOLDEN & GREGORY

S. Jarvin Levison

CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel for the opposing party in the foregoing matter with a copy of Debtor's Objection to Proof of Claim, Affirmative Allegations, and Application for Injunctive Relief by depositing said copy in the United States Mail in a properly addressed envelope with adequate postage thereon, addressed to:

Webb, Daniel & Betts
1901 Cain Tower
229 Peachtree Street, N.E.
Atlanta, Georgia 30303

Neil F. Hartigan, Esq.
Office of the Attorney General
State of Illinois
500 South Second Street
Springfield, Illinois 62706

This 7 day of October, 1983.

S. Jarvin Levison